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2 SPECIAL MASTER JUDGE FINKLE
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7 BEFORE THE INSURANCE COMMISSIONER
8 OF THE STATE OF WASHINGTON

9 In the Matter of the Application
10 regarding the Conversion and
11 Acquisition of Control of Premera Blue
12 Cross and its Affiliates.

No. G 02-45

PREMERA'S RESPONSE TO MOTION
FOR AUTHORIZATION TO
DISCLOSE AEO MATERIAL TO
AARON KATZ

13
14 *Introduction*

15 The Intervenor Group Premera Watch Coalition ("Intervenors") engaged a
16 testifying expert, Aaron Katz, to draft a report and offer hearing testimony on aspects of
17 Premera's proposed reorganization. As any disclosure of AEO material would require
18 notice to Premera of the recipient, the Intervenors made a tactical decision not to provide
19 Mr. Katz with AEO material so that they could avoid identifying their expert until the
20 deadline for expert reports. The day after his report was released, the Intervenors gave
21 Premera notice of their intent to disclose AEO material to Mr. Katz. Having chosen to
22 have him author his report on the basis of public information, however, the Intervenors
23 should not now be allowed to provide Mr. Katz with AEO material after he has
24 memorialized his expert opinions and submitted his final report.
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PREMERA'S RESPONSE TO MOTION FOR
AUTHORIZATION TO DISCLOSE AEO
MATERIAL TO AARON KATZ - 1

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Response

Safeguarding trade secrets against any unnecessary sharing is of paramount importance, and Mr. Katz has demonstrated that he does not need access to Premera's most precious competitive information in order to evaluate the proposed reorganization. Premera objects to the disclosure of AEO material to Mr. Katz at this late date. His report is final, and his deposition is scheduled to be taken on Friday, December 5, 2003, the discovery cut off. Providing him with AEO material after his report is final and on the eve of his deposition would make discovery of Mr. Katz's opinions and their basis a moving target not contemplated by the discovery schedule in this matter.

The Intervenors had ample time to seek access to Premera's Confidential and AEO material for Mr. Katz, but deliberately chose not to do so. As the Intervenors admit, the engagement of Mr. Katz was contemplated as early as December 2002 (see Motion at 4). The Intervenors decided not to disclose AEO material to Mr. Katz, ostensibly to ensure that his report would be publicly accessible. The same concerns with public access, however, are equally raised by deposition and hearing testimony that is colored by a witness' review of AEO or Confidential material. Having written his report and formed his opinions on the basis of public information, Mr. Katz should not now be given Premera's most sensitive business information.

While the protective order allows disclosure of AEO material to a party's expert under certain circumstances, by the Intervenors' own analysis, Mr. Katz has no need for that material. The Intervenors determined that Mr. Katz did not need AEO or Confidential material in order to fully evaluate Premera's proposal and to form his expert opinions or write his report. Subsequently, Premera has submitted redacted versions of the expert reports to the Commissioner for public dissemination. Mr. Katz may assist

PREMERA'S RESPONSE TO MOTION FOR
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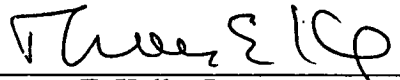
1 counsel in hearing preparation by using the public versions of the expert reports, and need
2 not have access to Premera's most sensitive business information to do so.

3 *Conclusion*

4 As a practical matter, access to AEO and Confidential material will only give Mr.
5 Katz a means to buttress or alter his opinions in a manner that Premera will be unable to
6 explore prior to the hearing. This belated bolstering is not appropriate, and Premera asks
7 the Special Master to rule that AEO and Confidential material may not now be provided to
8 Mr. Katz.

9 DATED this 1st day of December, 2003.

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PREMERA'S RESPONSE TO MOTION FOR
AUTHORIZATION TO DISCLOSE AEO
MATERIAL TO AARON KATZ - 3

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